



# City of Norfolk

Office of the City Manager

C: ACM Stein

September 19, 2006

To the Honorable Council  
City of Norfolk, Virginia

Re: Ordinance to Approve an Encroachment  
Agreement with 421 Granby, LLC t/a  
DINE Property at 421 Granby Street

Ladies and Gentlemen:

I. **Recommended Action:** Adopt ordinance.

II. **Overview**

This agenda item is an Encroachment Agreement that authorizes 421 Granby, LLC t/a DINE to encroach into an area encompassing approximately 159 square feet of the right-of-way along Granby Street.

III. **Analysis**

A. **General**

Norfolk City Code, Section 42-10, requires all encroachments into the rights-of-way to be approved by City Council. An encroachment is an approved object or structure that encroaches into a City of Norfolk right of way.

The purpose of this encroachment is to allow DINE to have outdoor dining in conjunction with the operation of the restaurant on Granby Street. There is sufficient room to allow passing pedestrian traffic along the sidewalk. The term of the permission to encroach is no longer than five (5) years to commence September 1, 2006, and terminating August 31, 2011. The permission is subject to the right of revocation by the City Council.

B. **Fiscal**

By the terms of this Encroachment Agreement, 3<sup>rd</sup> Planet will pay an annual rent to the City of Norfolk of \$714.42.

C. Environmental

There are no environmental issues related to the area of the encroachment.

D. Community Outreach/Notification

Public notification for this item was conducted through the City of Norfolk's agenda notification process.

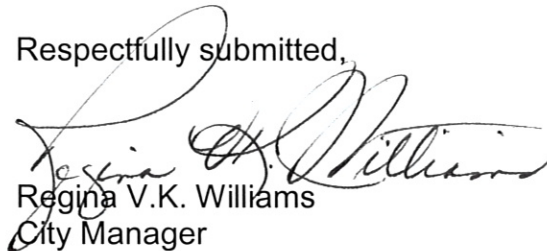
IV. Board/Commission Action

The improvements intended for the encroachment area have been approved by the Norfolk Design Review Committee and the Planning Commission.

V. Conclusion

This Encroachment Agreement between the City of Norfolk and 421 Granby, LLC will allow DINE to encroach into Granby Street in order to provide an outdoor dining opportunity. Therefore, it is recommended that the City Council adopt the attached ordinance, which authorizes the City Manager to execute the Encroachment Agreement.

Respectfully submitted,

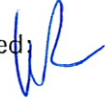
A handwritten signature in black ink, appearing to read "Regina V.K. Williams", is written over the typed name and title.

Regina V.K. Williams  
City Manager

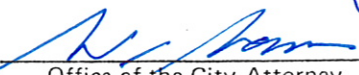
Coordination/Outreach

This letter has been coordinated with the Office of Real Estate and the City Attorney's Office.

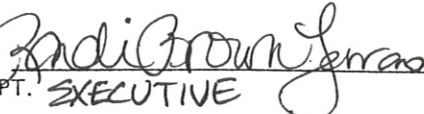
08/11/06 pfm

Form and Correctness Approved: 

Contents Approved:

By   
Office of the City Attorney

NORFOLK, VIRGINIA

By   
DEPT. EXECUTIVE**ORDINANCE No.**

AN ORDINANCE APPROVING AN ENCROACHMENT AGREEMENT WITH  
421 GRANBY, L.L.C., T/A DINE, FOR PROPERTY AT 421  
GRANBY STREET.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and provisions of the Encroachment Agreement between the City of Norfolk and 421 Granby, L.L.C., t/a Dine ("421 Granby"), a copy of which is attached hereto, by which the City of Norfolk authorizes 421 Granby to encroach into the right of way at 421 Granby Street, in two areas measuring no more than 5'8" by 14' each, for a total of approximately 159 square feet, upon certain conditions specifically set forth therein, is hereby approved.

Section 2:- That the City Manager is authorized to execute said Encroachment Agreement, which shall be approved by the Office of the City Attorney, for and on behalf of the City.

Section 3:- That this ordinance shall be in effect from and after its adoption.

## **ENCROACHMENT AGREEMENT**

This Encroachment Agreement (hereinafter "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia (hereinafter "City"), and **421 GRANBY, L.L.C. T/A DINE** (hereinafter "421 Granby").

### **WITNESSETH:**

1. **ENCROACHMENT AREA.** City hereby grants permission to 421 Granby to encroach into the right-of-way of Granby Street at 421 Granby Street, in two areas measuring approximately 5'8" by 14' each, with a total of 158.76 square feet, more or less, as shown on Exhibit A attached hereto ("Encroachment Area"), for the purpose of outdoor dining and no other purpose.

2. **USE.** 421 Granby shall be permitted to occupy the Encroachment Area for outdoor dining uses in conjunction with the operation of the restaurant as a dining facility.

3. **TERM; TERMINATION.** The term of the permission to encroach granted hereby shall be no longer than five (5) years and shall commence on September 1, 2006, or upon the effective date of any authorizing ordinance, whichever shall last occur, and shall terminate on August 31, 2011. However, it is expressly understood that the permission granted hereby is expressly subject to the right of revocation by the Norfolk City Council, and that in the event of such revocation, 421 Granby, or its successors or assigns, if requested by City, shall remove the encroaching structures and shall cease using the Encroachment Area.

4. **COMPENSATION.** As compensation for the privilege of encroaching into the right of way, 421 Granby shall pay City annual rent in the amount of Seven Hundred Fourteen and 42/100 Dollars (\$714.42) in monthly installments of \$59.54 beginning on the first day of September, 2006 or the day the ordinance is effective whichever is later. The rent shall be paid

by check payable to the Norfolk City Treasurer and sent to the Office of Real Estate, Executive Department, City Hall Building Room 306, 810 Union Street, Norfolk, Virginia 23510.

5. **LATE FEES.** For any late payments received 15 days after the first of each month, 421 Granby shall pay a late fee of five percent (5%) of the amount not paid when due.

6. **UTILITIES.** City shall not be responsible for utilities of any type used within the Encroachment Area. 421 Granby shall pay all utility meter and utility services charges for all utilities, including but not limited to gas, electricity, water, telephone, sewer, and any other necessary to serve the Encroachment Area.

7. **REPAIRS.** 421 Granby shall keep and maintain the Encroachment Area in good and complete state of repair and condition. 421 Granby shall make all repairs and replacements of every kind to the sidewalks and paved areas of the Encroachment Area in order to preserve and maintain the condition of the Encroachment Area. All such repairs and maintenance shall be performed in a good and workmanlike manner, be at least equal in quality and usefulness to the original components, and not diminish the overall value of the Encroachment Area.

8. **REQUIREMENTS OF PUBLIC LAWS.** 421 Granby shall suffer no waste or injury to the Encroachment Area and shall comply with all federal, state and municipal laws, ordinances and regulations applicable to the structure, use and occupancy of the Encroachment Area. In addition, 421 Granby shall effect the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the Encroachment Area.

9. **CITY'S RIGHT TO ENTER AND CURE.** City shall retain the right to enter upon the Encroachment Area at any time for the purpose of inspecting the Encroachment Area, ascertaining compliance with this Agreement, and making any repairs which City deems necessary as a consequence of any failure of 421 Granby to meet their obligations under this Agreement. The cost of any such repairs shall be deemed additional compensation payable to



the City on demand. Any entry upon the Encroachment Area or cure and repair shall be accomplished by City at reasonable times and in the exercise of reasonable discretion by the City. The making of any repairs by City shall not constitute a waiver by City of any right or remedy upon 421 Granby default in making repairs.

10. **NOTICE.** Any notice shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

City: Executive Department – Office of Real Estate  
City Hall Building – Room 306  
810 Union Street  
Norfolk, Virginia 23510

With copies to: City Attorney  
900 City Hall Building  
810 Union Street  
Norfolk, Virginia 23510

421 Granby: Robert F. Wright  
421 Granby, LLC  
273 Granby Street – Suite 300  
Norfolk, Virginia 23510

Either party hereto may change its address to which said notice shall be delivered or mailed by giving notice of such change as provided above. Notice shall be deemed given when delivered (if delivered by hand) or when postmarked (if sent properly by mail).

11. **ENVIRONMENTAL MATTERS.** 421 Granby agrees that it will not introduce onto the Encroachment Area any toxic, hazardous or dangerous materials unless such material is stored, safeguarded, or used in accordance with applicable laws and regulations. 421 Granby will not allow any air, water or noise pollution to occur in the Encroachment Area. 421 Granby hereby agrees to use and occupy the Encroachment Area in a safe and reasonable manner and in accordance with applicable law.

City in turn agrees that 421 Granby shall not be responsible or assume liability for environmental conditions existing on or about the Encroachment Area prior to 421 Granby occupancy thereof under this Agreement.

12. **DESTRUCTION.** If the encroaching structures or any part thereof shall be damaged or destroyed by fire, lightning, vandalism, or by any other casualty or cause, the permission granted hereby shall be automatically terminated unless the parties agree, in writing, to continue to permit the encroachments granted by this Agreement.

13. **NON-LIABILITY OF CITY.** City shall not be liable for any damage or injury which may be sustained by 421 Granby or any other person as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, gas, sewer, waste or spoil pipes, roof, drains, leaders, gutters, valleys, downspouts or the like, or of the electrical, ventilation, air conditioning, gas, power, conveyor, refrigeration, sprinkler, heating or other systems, elevators or hoisting equipment, if any, upon the Encroachment Area, or by reason of the elements; or resulting from acts, conduct or omissions on the part of 421 Granby, or their agents, employees, guests, licensees, invitees, assignees or successors, or on the part of any other person or entity.

14. **REMOVAL OF SNOW.** 421 Granby agrees to remove or cause to be removed, as the need for the same arises, snow and ice from the Encroachment Area.

15. **ALTERATIONS.** 421 Granby covenants and agrees that it will not make any improvements, changes installations, renovations, additions or alterations in and about the Encroachment Area without the prior written consent of the City other than the approval given by Norfolk's Design Review Committee on July 5, 2006 and Norfolk's Planning Commission on July 8, 2006. If 421 Granby installs or makes any improvements, additions, installations, renovations, changes on or to the Encroachment Area with the approval of City, 421 Granby hereby agrees to remove, if requested by City, any improvements, additions, installations,

renovations, changes on or to the Encroachment Area upon termination of this Agreement. In the event 421 Granby fails to remove and is requested to do so by City, then City may remove the improvements, additions, installations, renovations, changes and 421 Granby shall pay for the cost of such removal.

16. **ASSIGNMENT AND SUBLETTING.** City and 421 Granby agree that the permission to encroach granted hereby may not be assigned by 421 Granby without written approval from Norfolk's City Manager.

17. **SURRENDER BY 421 GRANBY.** 421 Granby will surrender possession of the Encroachment Area to City and remove all goods and chattels and other personal property therefrom upon termination of the permission granted hereby. 421 Granby shall return the Encroachment Area to the City in as good order and condition as it was at the beginning of 421 Granby use of the Encroachment Area. If 421 Granby has been requested to remove and fails to remove all items from the Encroachment Area upon termination hereof, City is authorized to remove and dispose of any such personal property and 421 Granby shall be liable to City for the cost of any removal and disposal.

18. **INSURANCE.** 421 Granby shall maintain in full force and effect a combined single limit policy of bodily injury, death and property damage insurance that coincides with the existing policy for 421 Granby of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate insuring City and 421 Granby against all liability arising out of the use, occupancy, or maintenance of the Encroachment Area and appurtenant areas, which policy shall be endorsed as primary insurance in favor of City naming the City, its officers, employees, agents and representatives as additional named insured, as evidenced by a Certificate of Insurance provided to the City within thirty (30) days after adoption of this



Agreement. All insurance policies and certificates shall provide for thirty (30) days advance notice in writing to the City Manager if the insurance is cancelled or modified.

19. **FIXTURES.** City covenants and agrees that no part of the improvements constructed, erected or placed by 421 Granby in the Encroachment Area shall be or become, or be considered as being, affixed to or a part of the right of way, and any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of City and 421 Granby to covenant and agree that all improvements of every kind and nature constructed, erected or placed by 421 Granby in the Encroachment Area shall be and remain the property of 421 Granby, unless such improvements are not removed upon termination of this Agreement.

20. **ENVIRONMENTAL COMPLIANCE.**

(a) For purposes of this section:

(i) “Hazardous Substances” include any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource and Conservation Recovery Act (42 U.S.C. SS6901 et seq.) (IIRCRAII), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. SS9601 et seq.) (CERCLAII) or any other federal, state, or local environmental law, ordinance, rule or regulation.

(ii) “Release” means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, disposing or dumping.

(iii) “Notice” means any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from any authority of the Commonwealth of Virginia, the United States Environmental Protection Agency (USEPAII) or other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional act or omission resulting or

which may result in the Release of Hazardous Substances into the waters or onto the lands of the Commonwealth of Virginia, or into waters outside the jurisdiction of the Commonwealth of Virginia or into the “environment,” as such terms are defined in CERCLA. “Notice” shall include the imposition of any lien on any real property, personal property or revenues of the Tenant, including but not limited to the Tenant’s interest in the Leased Premises or any of Tenant’s property located thereon, or any violation of federal, state or local environmental laws, ordinances, rules, regulations, governmental actions, orders or permits, or any knowledge, after due inquiry and investigation, or any facts which could give rise to any of the above.

(b) To the extent that 421 Granby may be permitted under applicable law to use the Encroachment Area for the generating, manufacture, refining, transporting, treatment, storage, handling, disposal, transfer or processing of Hazardous Substances, solid wastes or other dangerous or toxic substances, 421 Granby shall insure that said use shall be conducted at all times strictly in accordance with applicable statutes, ordinances and governmental rules and regulations. 421 Granby shall not cause or permit, as a result of any intentional or unintentional act or omission, a Release of Hazardous Substances in the Encroachment Area. If any such intentional or unintentional act or omission causes a Release of Hazardous Substance in the Encroachment Area, 421 Granby shall promptly clean up and remediate such Release in accordance with the applicable federal, state and local regulations and to the reasonable satisfaction of City.

(c) 421 Granby shall comply with all applicable federal, state and local environmental laws, ordinances, rules and regulations, and shall obtain and comply with any and all permits required thereunder or any successor or new environmental laws. Upon the receipt of any Notice, 421 Granby shall notify City promptly in writing, detailing all relevant facts and circumstances relating to the Notice.

(d) The requirements of this Section 20 shall apply to any successor in interest to 421 Granby, whether due to merger, sale of assets or other business combination or change of control.

(e) 421 Granby hereby agrees to defend (with counsel satisfactory to City) and indemnify and hold City harmless from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable cleanup costs and attorney's fees arising under this indemnity) which may arise directly or indirectly from any use or Release of Hazardous Substances in the Encroachment Area and losses and claims against City resulting from 421 Granby failure to comply strictly with the provisions of this Section 20. The provisions of this Section 20 shall survive the termination of this permission granted by this Agreement.

21. **LIENS OR ENCUMBRANCES.** If because of any act or omission of 421 Granby, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against any portion of the Encroachment Area, 421 Granby shall, at its own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from the City to 421 Granby of the filing thereof, and 421 Granby shall have the right to contest the validity of such lien if it so chooses.

22. **APPLICABLE LAW.** The permission granted by this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any suit or legal proceeding relating to permission granted hereby shall be brought only in the state or federal courts located in the Eastern District of Virginia.

23. **WAIVER OF TRIAL BY JURY.** To the extent permitted by law, City and 421 Granby mutually waive their rights to trial by jury in any action, proceeding or counterclaim

brought by either party against the other with respect to any dispute or claim arising out of the permission to encroach granted to 421 Granby by this agreement.

24. **OTHER REQUIREMENTS.**

(a) 421 Granby shall comply with all requirements of the City of Norfolk Department of Public Health with respect to the use of the Encroachment Area.

(b) The use of the Encroachment Area shall be subject to the jurisdiction and review of the City of Norfolk's Design Review Committee.

(c) 421 Granby use of the Encroachment Area shall not interfere with any water meters or sewer cleanouts.

(d) A trash can compatible in design and style with the table and chairs will be provided for the outdoor dining, and trash shall be removed daily.

(e) Tables and chairs will be arranged according to plan approved by Norfolk's Design Review Committee on July 5, 2006.

**IN WITNESS WHEREOF**, Parties have executed or have caused this Encroachment Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

**THE CITY OF NORFOLK**

ATTEST:

By: \_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Clerk

**421 GRANBY, LLC T/A DINE**

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO CONTENTS:

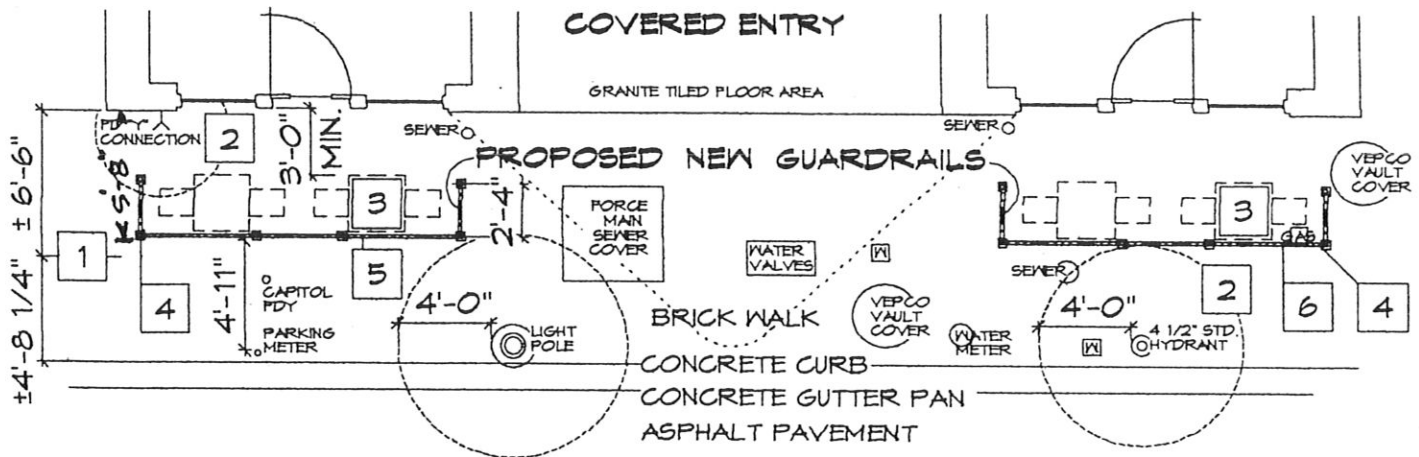
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Manager for Real Estate

FORM & CORRECTNESS APPROVED:

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Assistant City Attorney



## FLOOR AND PARTIAL SITE PLAN

1/8" = 1'-0"

### NUMBERED NOTES PERTAINING TO THIS PLAN SHEET

- |  |  |
|--|--|
| <p><b>1</b> PROJECTION OF EXISTING FENCE AT ADJACENT GUADALAJARA RESTAURANT</p> <p><b>2</b> 3'-0" CLEAR SPACE REQ'D. AS PER 2003 INTERNATIONAL FIRE CODE 508.5.5</p> <p><b>3</b> PORTABLE CHAIR AND TABLE SET TYPICAL FOR FOUR</p> | <p><b>4</b> 2" SQUARE STEEL NEWEL POST SET ON KING ARCHITECTURAL METALS (KAM) 4" SQUARE FORGED STEEL BASE PLATE #44-44 WITH 3/8" EXPANSION BOLTS AND COVERED WITH KAM 4 5/8" SQUARE CAST IRON NEWEL POST SHOE #45-234-2. PROVIDE KAM ITEM #16-807, 2" PRESSED POST CAP TO FINISH.</p> <p><b>5</b> KING ARCHITECTURAL METALS 45 1/4" HAND FORGED SCROLL BALUSTERS, ITEM #13-50-10 AT 4" O/C MAXIMUM BELOW R.B. WAGNER, ITEM #H1252 1 15/16" STEEL HANDRAIL MOULDING</p> <p><b>6</b> KING ARCHITECTURAL METALS 45 1/4" HAND FORGED SCROLL BALUSTERS, ITEM #13-45025-949.</p> |
|--|--|



**DINE INC.  
AT THE  
GRANBY  
THEATER**

421 GRANBY STREET  
NORFOLK VIRGINIA



FLOOR AND PART  
SITE PLAN SHOWING  
PROPOSED  
GUARDRAILS

JOB NO. **2K344**  
SHT. NO. **SK-2**  
OF **4**  
14 JUNE 2K6